

## Burlington Development Review Board

149 Church Street, City Hall  
Burlington, VT 05401

[www.burlingtonvt.gov/pz/DRB](http://www.burlingtonvt.gov/pz/DRB)

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Austin Hart  
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AJ LaRosa  
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Wayne Senville, (Alternate)  
Jim Drummond, (Alternate)



### BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday February 16, 2016, 5:00 PM

Conference Room 12, City Hall, 149 Church Street, Burlington, VT  
MINUTES

**Board Members Present:** Austin Hart, Jonathan Stevens, Geoff Hand, Ali Zipparo, A.J. LaRosa, Jim Drummond, Wayne Senville

**Board Members Absent:** Israel Smith, Brad Rabinowitz

**Staff Members Present:** Scott Gustin, Mary O'Neil, Anita Wade

#### I. Agenda

**Change with 99 Loomis St.**

#### II. Communications:

- a. This is information requested by the DRB relative to re-opened appeal for 154 Park Street, submitted by the City Attorney's office.
- b. Technical Review Committee Departmental Review on 451 Ethan Allen Parkway.

#### III. Minutes

#### IV. Public Hearing

##### 1. 16-0511CA/AP; 154 Park St (RM, Ward 3C) Amy E. Pickering

Re-open appeal on a family daycare in existing single family residence.  
(Project Manager, Mary O'Neil)

This project was previously viewed as a narrow issue on what various statutes and ordinances were at the time.

M.ONeil – received appellant's email asking the Board to broaden the scope of this appeal. Then recused from this project.

A.Hart – the decision was whether to broaden the scope asking the applicant to summarize why she wanted to expand the scope of the hearing.

M.Stanley – had made a written request to open the public hearing prior to the deliberative session and asked why this time was not allowed during the session.

A.Hart - believes the Board was aware of this request and explained there is a limited scope of the hearing pertaining to legal information as it pertains to interpreting the zoning ordinance. Asks staff for information.

S.Gustin – said there are three pieces of information necessary to review this project; the date of the CDO, date of State regulation on day care facilities, and whether the regulation supersedes State law.

A.Hart – there is a disconnect between State law and the zoning ordinance on licensing and registration.

M.Stanley - provides the Board with packet of information. Referred to State regulations 224 pertaining to child care and foster care. Said that the state does not permit someone to have child care if they are also providing foster care. Needs a home occupation conditional use permit.

J.Stevens - questions if the current ordinance recognizes daycare as a licensed and registered permitted use.

A.Zipparo – asks if the State of Vermont can register a small day care.

M.Stanley - said they can get registered, but if someone is a foster parent they are not allowed to provide daycare without review.

A.Hart - swears in applicant and interested parties.

A.Pickering – said a foster care parent can only watch two families. DCF does not have an issue with her licensing and says she does not need to be registered by the state. It is how the City of Burlington regulates this.

A.J.LaRosa – asked the owner/applicant if she knew the difference between licensing and registration and if the State treats in the same way or are they different?

A.Pickering – haven't looked into differences, but was always seeking licensing.

J.Stevens – mentioned the difference between licensing and registration; the State licenses for certification and registration is to acknowledge existence.

A.Zipparo – farmers the same thing. Don't know about this situation

A.Pickering – asked separate question about picking a child from a bus stop.

A.Hart – Board needs to first decide the issue before us and if applicant satisfies the definition of family day care under the zoning ordinance.

A.Pickering - apologized to Board members for all the time being taken with this.

A.Hart – acknowledged apology. Asked for city attorney's summary of zoning ordinance.

K.Sturtevant – assistant city attorney, mentioned the State law definition in 1967 provides an exception provided not more than 2 children. The City bylaws shows definition of family day care in 1987, 1992 and a rewrite in 1994 with the most recent in January 7, 2008. The list of amendments haven't changed since 1987.

G.Hand – questions if the language is consistent since 1987.

A.Zipparo – questions if the wording in the CDO is applicable.

A.Hart – closed the public hearing at 5:29pm.

## **2. 16-0784CU; 400 Pine St (ELM, Ward 5S) Howard Space Partnership LLC**

Performing arts center within existing mixed use facility. No site or exterior building changes included.

(Project Manager, Scott Gustin)

A.J.LaRosa recused himself from this item.

A.Hart - swears in applicant and interested parties. Board has read the materials and would like to ask questions. The biggest issue is allocation of space within the buildings. Need an understanding on parking are there and available for this use. Focusing on those two issues.

P.J. McHenry – introduced himself as tenant of Howard Space and owner of business, Arts Riot LLC.

A.Hart - asks staff for a summary.

S.Gustin – describes the project saying it will be half performance space and half café space. The food and beverage cannot exceed half the total area and there needs to be a number associated for this.

A.Hart - is food and alcohol served in both areas asking if this makes a difference.

P.J.McHenry – describes the business hours of operation and how the space will be used.

S.Gustin – said it was okay for dedicated room performance space and dedicated café space as long as there is no more encroachment of either space.

G.Hand – questions if total square footage is 4875 and if performance space is more than 50%.

S.Gustin – confirms the floor plan indicates square footage of 4875 and that area was represented as half performance and half café. Need to have a number.

P.J.McHenry – applicant can looking for café to be less than 50 %.

S.Gustin – agrees to this.

P.J.McHenry – questions what if performance space was more than 50%

A.Hart – asks if applicant can get a more precise number.

P.J.McHenry – yes.

A.Hart – referring to the plan asks what spaces are available to the performance/arts center.

P.J.McHenry - all of them. Understands that the Howard spaces are communal.

A.Hart – mentions they are in the process of moving and questions designated spaces.  
A.Zipparo - questions the fund raiser with over 1000 people and how does applicant intend to provide for that number of people.  
P.J.McHenry - it can manage a 1000 people. Has worked with Planning and Zoning and the Fire Marshall on spaces.  
A.Zipparo – asked if that parking will be included during the events.  
P.J.McHenry – this is not confirmed by the City.  
A.Hart – is this separately permitted?  
A.Zipparo – are these event hours frequently outside of normal operating hours?  
P.J.McHenry – Yes, these are separate permits from the City  
S.Gustin – said that certain uses are not compatible with the zoning district.  
A.Zipparo – questioned bike parking plans.  
P.J.McHenry – will be talking to landlord and City to supply parking.  
A.Zipparo – do you plan to provide parking spaces?  
P.J.McHenry - looking at indoor parking near Great August, but was not able to convince property owner.  
A.Zipparo – said there was a good track record at the location but how do you plan to deal with overcrowding and possible violence?  
P.J.McHenry – there have been instances where we called the police, but still have good track record.  
W.Senville - questions staff about parking management plans and 3 year monitoring? Asks what is the consequence of a staff denial?  
S.Gustin - management plans may work, but if denied, a solution needs to be arranged with the neighbors across the street. The condition would review the Board waivers. Could report annually for 3 years to see if plan is working or to find solution for shared parking.  
W.Senville – asks a question about parking regulations in the CDO.  
S.Gustin – this means it is legally enforceable over time and can be part of a management plan.  
A.Zipparo – asked if there was a City regulation or code that governs handicap seating in the establishment.  
S.Gustin – only ADA standards as administered by DPW.  
A.Hart - closes the public hearing at 5:55pm.

### **3. 16-0724PD; 451 Ethan Allen Parkway (RL, Ward 7N) Timothy G. Ales/Ales**

Preliminary plat for 9-unit planned unit development in three buildings and associated site improvements.  
(Project Manager, Scott Gustin)

S.Gustin - brings attention to supplemental material regarding this project.  
AJ.LaRosa – discloses that he has some knowledge, but no direct contact with owner/applicant.  
A.Hart – swears in applicants and interested parties. Asks applicant to assume this project is new.  
J.Anderson – The site is 7 acres and proposal is for 9 housing units with three triplexes. Board asked to place well back into site and said to revisit with State about wetlands. Staff asked to check again with State about placement of the site. State said to bring units closer to street. The owner downsized and had trouble coming up with funds for next round of design and permitting. Been to sketch plan twice and first with preliminary, but design not changed. Every board accepted and made recommendations and staff recommends approval.  
A. Hart- would it be helpful to view?  
D.Henson – plan is presented to board showing where a parking space is in garage for each of the units and direct sidewalk to each parking space with a second space behind garage.  
A.Zipparo - questions where the farm is located  
D.Henson - does not meet threshold for state and working with City stormwater management for recommendations on impervious paving.

W.Senville – asks if triplex is at the lower south elevation and fill requirements.

J.Anderson – confirms it is.

A.J.LaRosa – asks about site plan map.

W.Senville – asks question on how applicant is dealing with steep slope?

D.Henson – explains the site and utility plan will be finished with grading and gives a description of elevations of the buildings. Speaks to the slope is in the back of the property.

J.Anderson – mentions positioning of the building. The DAB asked us to meet conditions and we responded to all of them. We have not depicted utility meter screening. Questions on buildable area. Experiencing time limits for construction and not sure how going to do market phasing.

A.Hart – some sort of phasing plan would be helpful. Don't want to see neighbors subjected to seven years of construction.

J.Anderson - lot coverage is on page six with staff comments on front yard setbacks. Supplied this information to staff.

S.Gustin – the correct setbacks are addressed in tonight's supplemental materials.

J.Anderson – the Fire Marshall may require sprinklers'. The issue is whether turning radius is available on site and whether we need sprinklers.

A.Hart – asks staff question on third party analysis.

S.Gustin – there is a provision for a 3<sup>rd</sup> party review analysis of any topic is in CDO, 3.2.8(d).

A.Hart – recommends a review due to slopes?

S.Gustin – confirms and recommends a review also due to wetlands.

S.Stone – said project is in his backyard and doesn't agree with its location. He lives on Moore Dr. He feels with the very steep embankment it will require lots of clean fill to meet requirements of Act 250. Said the snow plow other day barely fit through on Ethan Allen Pkwy. Mentioned there is wildlife in this location. Thinks the last set of condo is where the bank will need to be reinforced. Said there is no room for cars on each both sides of the street, nor room for service vehicles. Tree cutting will be necessary. This is not a safe place to build. He believes fill for 100 acres does not seem feasible and still be able to make condos cannot affordable. He asks what will happen after building develops and whether there will be enough parking. He does not see this project as an improvement.

M.Brennan – at 437 Ethan Allen Pkwy says the project does not make sense. There is a massive ravine and a stream, lots of birds and wildlife. The project will be destructive to tgus area. She works at home and has 3 children at home under age of 12yrs. Concerns with the on-street parking situation and dangerous corner. Project doesn't fit in the neighborhood with the number of units. Wonders about the return on investment though this isn't our communities' issue. Very significant undertaking and asks the Board to think about values, green space, quality of life and the disruption to community life for a long time to come. She is submitting a letter to the Board.

S.Stone - shows Iphone pictures to Board.

K.Wade - live 2 houses down from the proposed development. She feels it is inappropriate for a triplex and cannot imagine how parking would work out. The corner is dangerous. Parking is difficult in area for current residents and development would create more problems. She has lots of fruit trees in our yard and does front yard gardening and would require a sidewalk in middle of front yard.

M.Henry – resides at 438 Ethan Allen and is new to neighborhood. His family spends a lot of time in their front yard in summers. He sees lots of trucks going through street and may not have bought the house. He feels he is not great for property values. Concerns for the children in the neighborhood and their safety. Any increase in traffic and noise would change nature of street.

J.Anderson - responds briefly, pointing out other triplexes in area, others are single family and substantial number of fourplexes. The plan is to use parking at the school for residents to use or clear with this with the police department to have adequate parking. We have adequate parking. Doug's firm is an engineering firm working with City and looking into slides in this area. For many years, City has drained into the site and now there is trash. We

will be addressing trash and improving drainage function. Due to trees will not be able to see over brow of the homes where we have our housing.  
Complying with ordinance with addressing every comment to place in compliance.  
W.Senville – asks parking and garage spaces.  
J.Anderson and D.Henson – said one for each unit inside.  
J.Stevens – asks will there be tandem parking.  
J.Anderson – yes.  
G.Hand – asks about the total impervious area and total area of disturbance.  
D.Henson– we will supply this information. A curb cut will not eliminate neighbors planting.  
Spoke about the trees on property and adequate site distance/clearance. There are a lot of erosions is which are self-inflicted by the City and will clean up; will get pieces of data.  
A.Hart - closed public hearing at 6:40pm.

**4. 16-0707CA/CU; 77-78 (87) ? Pearl St (D, Ward 3C) Irene C. Hinsdale**

Demolish carriage barn and replace with parking spaces.  
(Project Manager, Mary O'Neil)

A.Hart - swears in applicant.  
W.Howard – applicant for Hinsdale properties explained the application is to demolish building and provide parking, and said he went over staff comments. Would like to reapply for green space, shrubbery or repurpose building outside of Burlington.  
A.Hart – said that staff wanted additional information on your plan and asked what could be done.  
AJ.LaRosa – suggests applicant continue to reevaluate and work with staff.  
A.Hart – explained to applicant we don't know what you want to do and therefore cannot provide feedback and ask questions. You are looking at demolishing the barn. The staff looks at this as a historic structure that needs to be handled appropriately according to zoning ordinance.  
W.Howard – looking at all the information this was helpful.  
J.Stevens - you have to demonstrate this structure cannot be rehabilitated and submit an engineer's report. This is an incomplete application. The Board cannot make a decision based on its historic merit.  
A.Hart – we suggest you sit down with staff and reevaluate this project allowing you to rework it. We will continue the public hearing for a date at specific time. Do you have a time you want to come back?  
W.Howard - suggested 90 days.  
A.Hart – conditioned on fact that staff may feel this is not acceptable since it allows it to continue to deteriorate. Continue for date uncertain.  
M.ONeil – the bylaws require within 6 months.  
A.Hart – otherwise may need to file a new application. I make a motion to continue not more than six months from today to re-evaluate this project.  
J.Stevens - seconds the motion.  
Board Vote: 7-0-0.

**5. 16-0477AP; 99 Loomis St (RL, Ward 1E) Jonathan E. Lubas**

Appeal of Code Enforcement determination relative to occupancy by unrelated adults.  
(Project Manager, Jeanne Francis)

Settlement reached. No discussion due to settlement.

**c. Other Business**

**Meeting was adjourned 6:49pm**

**d. Adjournment**

**Deliberative Session February 29 at 5:00pm 2016**

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**A.Hart, Chair Development Review Board**

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**Date**

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**A.Wade, Planning and Zoning Clerk**

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**Date**

Plans may be viewed in the Planning and Zoning Office, (City Hall, 149 Church Street, Burlington), between the hours of 8:00 a.m. and 4:30 p.m.

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at [www.burlingtonvt.gov/pz/drb/agendas](http://www.burlingtonvt.gov/pz/drb/agendas) or the office notice board, one week before the hearing for the order in which items will be heard.